



March 7, 2001

Ms. Anne M. Constantine
Legal Counsel
Dallas-Fort Worth International Airport Board
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR2001-0901

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144789.

The Dallas-Fort Worth International Airport Board (the "board") received on December 20, 2000 a request for "any and all other reports" that pertain to a specified automobile accident. The board in January 1999 received a request for various information pertaining to the same accident, and that requestor has filed a complaint with this office alleging the board has improperly withheld information responsive to his request. We shall address both requests and the complaint in the present ruling. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that at least some of the information responsive to the December 20, 2000 request evidently was released by the board to a member of the public, the January 1999 requestor. You inform this office that the following information was released in response to the request of that requestor:

1. Texas Peace Officer's Accident Report No. 9900001
2. Supplement Report dated 1/5/99
3. Emergency Medical Report No. 9900001
4. Fire Report No. 9900001
5. Vehicle Report No. 9900001

6. Crime Scene Search Report No. 9900001
7. Evidence Report No. 9900001 dated 1/1/99, 0200 hours
8. Evidence Report No. 9900001 dated 1/1/99, 0401 hours
9. Supplement Report dated 1/12/99
10. Supplement Report dated 1/13/99
11. Supplement Report dated 1/14/99
12. Supplement Report dated 1/22/99

We are also advised, however, that the board redacted information from items 6, 7, 8, and 12, evidently because the board considered the redacted information to be excepted under section 552.108 of the Government Code. *See* Gov't Code § 552.108. We have no record of the board requesting a decision from this office regarding the applicability of that exception to the redacted information. The board also now asserts section 552.103 of the Government Code to this information.

Section 552.301(a) of the Government Code requires a governmental body to request a decision from this office about whether information the governmental body seeks to withhold from the public is within the claimed exception. As noted above, we have no indication the board requested a decision in response to the January 1999 request. If a governmental body does not request a decision from this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. *See, e.g.,* Open Records Decision No. 150 (1977). Section 552.103 is a discretionary exception that does not demonstrate a compelling reason to withhold information from the public.¹ The board also has not demonstrated a compelling reason to withhold the information under section 552.108. *See* Open Records Decision No. 586 (1991). As no compelling reason has been demonstrated to withhold the information, we conclude the information responsive to the January 1999 request must be released to that requestor in its entirety. We next address the December 20, 2000 request.

As to the information that was released by the board to the requestor in response to the request of January 1999, we advise that to the extent this information is also responsive to the December 20, 2000 request, and to the extent this information is not confidential by law, the board may not now withhold this information from the present requestor. *See* Gov't

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

Code § 552.007.² We next address the documents you have submitted for our review as responsive to the December 20, 2000 request.

We note that the public release of some of the submitted documents is governed by provisions outside the Public Information Act. Included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The public availability of this document is governed by section 47 of article 6701d, V.T.C.S..

The Seventy-fourth Legislature amended section 47 of article 6701d, V.T.C.S. to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413. Further, the Seventy-fourth Legislature also repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870-71.³ In section 13 of Senate Bill 1069, the Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under specific circumstances. Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code § 550.065). The Seventy-fifth Legislature also repealed section 47 of article 6701d, V.T.C.S. in section 16 of Senate Bill 1069. *Id.* § 16(b), 1997 Tex. Gen. Laws 4575, 4583.

However, a Travis County district court has issued a permanent injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code enacted by section 13 of Senate Bill 1069. *Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has declared that

²It appears that the information described in item 3 above was released to the prior requestor pursuant to a signed authorization under section 773.093 of the Health and Safety Code. We thus assume that the information described in item 3 is governed by the Emergency Medical Services Act, chapter 773 of the Health and Safety Code. Records governed by chapter 773 are generally confidential with respect to the general public. *See* Health and Safety Code § 773.091. However, in connection with the request received by the board on December 20, 2000, no such information was submitted for our review. We therefore assume the information described in item 3 is not responsive to the December 2000 request. Because this information was not submitted for our review, we do not address whether the board is prohibited from releasing this information to the present requestor.

³Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment of section 47 of article 6701d, V.T.C.S. is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c). In 1997, the Seventy-fifth Legislature enacted Senate Bill 898 and amended section 550.065 of the Transportation Code to conform to section 47 of article 6701d as enacted by the Seventy-fourth Legislature and repealed article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49.

the law in effect prior to the passage of Senate Bill 1069 now governs and remains unaffected by the permanent injunction. We have determined that the law in effect prior to the passage of Senate Bill 1069 was section 47 of article 6701d, V.T.C.S.⁴

Section 47(b)(1) of article 6701d provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident[.]

V.T.C.S. art. 6701d, § 47(b)(1). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.⁵ Under this provision, a law enforcement agency employing a peace officer who made an accident report “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the board with the date of the accident, and the names of persons involved in the accident. Thus, section 47(b)(1) of article 6701d, V.T.C.S. requires you to release the accident report to the requestor.

⁴Although the Seventy-fifth Legislature enacted Senate Bill 898 prior to the passage of Senate Bill 1069, Senate Bill 898 was not effective until September 1, 1997. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill 1069 expressly provides that to the extent of any conflict, Senate Bill 1069 prevails over another Act of the Seventy-fifth Legislature. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted at the same session of the legislature, the latest in date prevails. Gov’t Code § 311.025(b). Because Senate Bill 898 was never effective and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S. was the law in effect prior to the passage of Senate Bill 1069 regarding the availability of accident report information rather than section 550.065 as amended by Senate Bill 898.

⁵We note that the text of amended section 47 of article 6701d is not found in Vernon’s Revised Civil Statutes or in the Transportation Code. However, section 47 of article 6701d is published in the 1995 General and Special Laws of the 1995 Legislature at chapter 894, section 1.

The submitted documents also include an autopsy report. Section 671.011(a) of the Health and Safety Code defines the contents of an autopsy report as follows:

- (1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and
- (2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

An autopsy report does not include “investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.” Health & Safety Code § 671.011(b). Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . *The records are subject to required public disclosure in accordance with Chapter 552, Government Code*, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11 (emphasis added). The submitted autopsy report does not include photographs or x-rays. Thus, pursuant to the above provision, the submitted autopsy report is a public record and must be released to the requestor in its entirety.

As to the remaining documents submitted for our review, we note these comprise completed reports and attachments that comprise a completed investigation. Section 552.022 of the Government Code provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information *and not excepted from required disclosure under this chapter unless they are expressly confidential under other law*:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). We find that the remaining submitted documents are subject to section 552.022(a)(1). Accordingly, this information is subject to required public release except to the extent the information is expressly confidential under other law. As noted above, section 552.103 of the Government Code, even if applicable, is a discretionary exception under the Public Information Act. As such, section 552.103 does not comprise other law that makes information expressly confidential. Therefore, the information may not be withheld under section 552.103.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

...

(b) Information described by Subsection (a) may be released only if, and the manner, authorized by Chapter 730, Transportation Code.

This provision is intended to protect the privacy of third parties. We therefore conclude that you must withhold the Texas driver's license number, vehicle identification number, license plate numbers, and documents we have marked under section 552.130.

Some of the submitted documents contain criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990)*. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Some of the information submitted for our review is CHRI generated by TCIC and/or NCIC. The requestor is not among those authorized to obtain this information. Accordingly, this information is expressly confidential under other law and must be withheld. We note that the last three pages of the information we have identified as CHRI contain a facsimile notation apparently indicating the information may have been obtained by the board from the TLETS system of the Texas Department of Public Safety. These pages contain dispatch information rather than information regarding the criminal history of individuals. This information may only be withheld as CHRI if the board in fact obtained it from the TLETS system.

Finally, some of the documents contain social security numbers. A social security number or "related record" may be confidential under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the board pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the information responsive to the January 1999 request must be released in its entirety to that requestor pursuant to section 552.302 of the Government Code. To the extent information that is not confidential by law was released in response to the January 1999 request, section 552.007 of the Government Code requires that such information must also be released to the present requestor if it is responsive to the December 20, 2000 request. As for the submitted documents, the peace officer accident report must be released to the present requestor pursuant to section 47 of article 6701d, V.T.C.S. The autopsy report is subject to required release pursuant to section 11 of article 49.25 of the Code of Criminal Procedure. The remaining information is subject to section 552.022(a)(1) of the Government Code and therefore is also subject to required release to the extent it is not expressly confidential under

other law. We have marked the documents and identified the information that is or may be made expressly confidential under other law. The remaining submitted information must be released to the present requestor pursuant to section 552.022(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

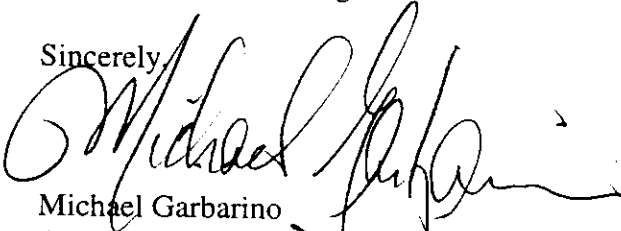
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144789

Encl. Submitted documents

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